

COMMISSION ON JUDICIAL SELECTION
APPLICATION
NEVADA SUPREME COURT
SEAT G

By

Chris William Davis
(Insert applicant name)



**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 47)**

Personal Information

1. Full Name: Chris William Davis
2. Have you ever used or been known by any other legal name? No. If so, state name and reason for the name change: Not Applicable.
3. Work Address: 255 East Warm Springs Road, Suite 100, Las Vegas, Nevada 89119.
4. How long have you been a continuous resident of Nevada?

I have been a continuous resident of Nevada for eighteen (18) years.
5. Age: fifty-six (56) years old.
(NRS 3.060 states that a district judge must be at least 25 years old.)

Employment History

6. Using the format provided in Attachment "A" please start with your current employment or most recent employment, self-employment, and periods of unemployment for the 20 years immediately preceding the filing of this Application.

See Attachment "A."

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

Western High School; 4601 W. Bonanza Road, Las Vegas, Nevada 89107; September 1975 - June 1977; High School Diploma; Early Graduation.

Brigham Young University; Provo, Utah 84602; August 1977 - April 1979, October 1981 - April 1984; January 1985 - August 1985; B. A. in Political Science. I initially left in 1979 to serve a two (2) year mission for the Church of Jesus Christ of Latter-day Saints. I left in 1984 for a brief academic suspension which was the result of a broken marriage engagement which interfered with my ability to concentrate on school work. I then left in 1985 to start my own computer consulting business. I ultimately graduated from Brigham Young University in August 1992.

University of Utah; 201 South 1460 East, Salt Lake City, Utah 84112; September 1989 - May 1992; I left to attend Law School.

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

During High School, I was an active participant in Debate and the Varsity Quiz television program. While in Debate, I took Second (2nd) place in the Clark County Debate Championship.

At Brigham Young University, I was one of the founding student organizers of a statewide exit poll for the 1982 election. To conduct the poll, we recruited eleven (11) other colleges and universities from around the state of Utah. I participated in the creation of a training video which was used to provide instruction to the other colleges and universities on proper polling techniques and led training at Utah State University. I also assisted in the creation of proper exit poll questions which were designed to more fully understand the reasons for the election results. I was given the opportunity to interview Senator Orrin Hatch, which interview was broadcast on election day. On election day, I was charged with supervising pollsters to insure that proper polling techniques were used. After the election, I helped analyze the election data obtained so that the results could be published. The poll was the most accurate predictor of election results in the state of Utah that year, and even accurately predicted the election results of a race that was determined by less than 1% of the vote. The poll still continues to provide Utah's most accurate polling data for local, state, and national elections. See <http://exitpoll.byu.edu/>.

At the University of Utah, I was selected to intern for Speaker of the Utah House of Representatives, Robert Bishop. While working for Speaker Bishop, I was tasked with reviewing legislation to provide input as to the legislation's suitability. I also attended committee meetings on behalf of Speaker Bishop to report on the results of those meetings. I also had the opportunity to draft legislation, which was introduced into the House of Representatives.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

Cleveland State University, Cleveland-Marshall College of Law; 2121 Euclid Avenue, LB 138, Cleveland, Ohio 44115; August 1992 - May 1993. I left Cleveland-Marshall because I was ranked second (2nd) in my class, which allowed me to transfer to the University of Utah College of Law and take advantage of in-state tuition.

University of Utah; 332 South 1400 East, Salt Lake City, Utah 84112; August 1993 - May 1995; J.D., May 1995; I graduated in the top 25% of my class.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

I was employed part-time during law school at the firm of McMurray, McMurray, Dale and Parkinson, in Salt Lake City, Utah, as a law clerk, from December 1992 to May 1995. After graduation, I was employed by the firm as an attorney.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, extracurricular activities.

While at the University of Utah College of Law, I externed for a clinic at the Utah Legal Aid Society and helped litigate family law matters. I was also twice named as a William H. Leary Scholar, an award given to students in the top 10% of their class for a semester.

Law Practice

12. State the year you were admitted to the Nevada Bar.

I was admitted to the State Bar of Nevada in October 1998.

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

I was admitted to the Utah State Bar in October 1995.

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No, I have never been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state.

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.

Over the past five years approximately 80% of my time has been involved in litigation matters. Of that time, approximately 75% is before trial courts and 25% is before appellate courts.

16. Estimate percentage of time spent on (1) domestic/family and juvenile law matters, (2) civil litigation, (3) criminal matters, and (4) administrative litigation.

My percentage of time spent on domestic/family and juvenile law matters is approximately 1%. Approximately 80% of my time is spent on civil litigation, 4% on criminal matters, and 15% on litigating administrative matters.

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

Approximately 30% of my litigation matters involved cases set for jury trials, while 70% of my litigation matters involved cases set for non-jury trials.

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

I have not tried any jury cases to a conclusion during the past five years. I have only tried one case to a conclusion in a court of record: *Rojas-Lopez v. Thomason*, Case No. A-09-589685-C, before the Nevada District Court for the Eighth Judicial District. I was sole counsel for the City of North Las Vegas at the bench trial.

In my career, I have been very fortunate to secure judgment on behalf of my clients through motions to dismiss or motions for summary judgment in many of the cases I have litigated. While I have prepared for trial on numerous occasions, the remainder of the court cases were resolved either through mandatory mediation required by Eighth Judicial District Court Rules for cases under \$50,000.00, or through settlement on terms favorable to my client.

19. List courts and counties in any state where you have practiced in the past five years.

Nevada Eighth Judicial District Court, Clark County, Nevada.

Nevada Supreme Court, Clark County, Nevada.

United States District Court for the District of Nevada, Clark County, Nevada.

United States Bankruptcy Court for the District of Nevada, Clark County, Nevada.

United States Court of Appeals for the Ninth Circuit, San Francisco, California.

North Las Vegas Justice Court, Clark County, Nevada.

Las Vegas Justice Court, Clark County, Nevada.

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), and list or describe:

- a. case name and date,
- b. court and presiding judge and all counsel
- c. the importance of each case to you and the impact of each case on you,
- d. your role in the case.

1. I successfully defended Grand Sierra Resorts ("GSR") against in a class action asserting statutory wage and discrimination claims in *Sargent v. Hg Staffing, LLC*, Case No. 3:13-CV-00453-LRH-WGC, filed in 2013. The case was filed in United States District Court for the District of Nevada, before the Honorable Larry R. Hicks, with H. Stan Johnson, Esq. also representing GSR. Plaintiffs were represented by Mark R. Thierman, Joshua D Buck, and Leah Jones. When I was first assigned as counsel, the case had already been provisionally approved as a collective action. I drafted a motion for summary judgment which successfully argued, among other issues, that NRS Chapter 608 did not provide for a private right of action for wages, other than claims for minimum wages. I also successfully argued that the collective action, under the Fair Labor Standards Act, should be decertified, and that state law claims should not be certified as a class action. As the Nevada Supreme Court has not yet decided whether NRS Chapter

608 provides for a private right of action, I had the opportunity to provide the same analysis required of a Justice on the Nevada Supreme Court.

2. I successfully defended the City of North Las Vegas (the "City") against claims of disability discrimination in *Curley v. City of North Las Vegas*, Case No. 2:09-cv-01071-KJD-VCF, filed in 2009. The case was filed in United States District Court for the District of Nevada, before the Honorable Kent J. Dawson, with Jeffrey F. Barr, Esq. also representing the City and Michael P. Balaban, Esq., representing Michael P. Curley. The case is notable because it is one of the first cases to address the expanded definition of disability under the 2008 amendment to the ADA ("ADAAA"). I served as lead counsel for the City and drafted the motion for summary judgment which successfully argued, among other issues, that Plaintiff was not disabled even under the expanded definition of a disability. Due to the novelty of the issue, I had the opportunity to hone my skills in statutory construction which will serve me well as a Justice on the Nevada Supreme Court.
3. I successfully defended the City against tort claims in *Rojas-Lopez v. City of North Las Vegas*, Case No. A-09-589685-C, filed in 2009. The case was filed in Nevada Eighth Judicial District Court, before Honorable Mark R. Denton and then transferred to the Honorable Nancy L. Allf, with Jeffrey F. Barr, Esq. also representing the City, and Michael H. Hamilton, Esq. representing Plaintiffs. I served as sole counsel at the bench trial of this case and drafted the appellate brief before the Nevada Supreme Court in *City of North Las Vegas v. Rojas-Lopez*, Case No. 5993. This case was important because it is one of the few cases I could not resolve by either motion or settlement. It is also notable because the appellate brief was the first time I argued before the Nevada Supreme Court that the Notice of Claim Statute found in NRS 268.020 did not violate the equal protection clause as held in *Turner v Staggs*, 89 Nev. 230, 235-36, 510 P.2d 879,882-83 (1973). My argument was based on *Agost v. Idaho*, 423 U.S. 993 (1975), which dismissed an appeal of an Idaho Supreme Court decision upholding an almost identical notice of claim statute against an equal protection challenge. I argued that the dismissal in *Agost* was binding precedent under *Hicks v. Miranda*, 422 U.S. 332, 343-44 (1975). In formulating this strategy, I had to rely on my ability to find creative solutions which should serve me well as a Justice on the Nevada Supreme Court.
4. I successfully defended the City against claims of civil rights violations in *Rice v. City of North Las Vegas*, 2:07-cv-01192-RCJ-GWF, filed in 2007. The case was filed in United States District Court for the District of Nevada, before the Honorable Robert C. Jones, with Carrie Torrence, Esq. also representing the City, and Peter Goldstein, Esq. representing Plaintiffs. The case is notable because it involved complex Fourth Amendment issues. The case involved allegations that police officers lacked probable cause and used unreasonable force to detain Plaintiffs. While these issues were raised in a civil case, the same issues are present in criminal cases. Such civil cases are almost never decided on summary judgment due to factual disputes inherent in such cases. Drafting the successful motion for summary judgment required making fine distinctions as to what constitutes probable cause and unreasonable force. I served as lead counsel for the City and drafted the motion for summary judgment.
5. I defended the City against claims of unfair labor practices in *City of North Las Vegas v. Spannbauer*, Nevada Supreme Court Case Number 54849, the appeal of which was filed in 2009. This appeal was filed with the Nevada Supreme Court, and was heard En Banc,

with Chief Justice Parraguirre presiding. Also representing the City were Carrie Torrence, Esq., L. Steven Demeree, Esq., Nicholas Vaskov, Esq., and Jeffrey Barr, Esq. Counsel for Appellee Eric Spannbauer was Daniel Marks, Esq. and Adam Levine, Esq. Counsel for the Nevada Board State of Nevada, Local Government Employee-Management Relations Board was Scott R. Davis, Esq. The case was significant because I was asked to take the lead in this appeal after the opening brief was filed because the lead attorney retired from the City. Because I was assigned to take the lead in the case in mid-briefing, my skills were tested in becoming quickly familiar with a case so that I could draft the reply brief. These are the same quick study skills that would be required of a District Court Judge. I also was required to find innovative methods to tailor new arguments so that they would not be challenged as being raised for the first time in the reply brief. This case was my first opportunity to present oral arguments before an En Banc panel of the Nevada Supreme Court, which provided valuable insights on how each current justice handles an appeal. Because the appeal was unsuccessful, I faced the uphill challenge of drafting a Petition for Rehearing. While such petitions are summarily dismissed, the Supreme Court found that further briefing was necessary to explore issues not fully addressed in the Court's opinion.

21. Do you now serve or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

I have had significant experience as a quasi-judicial officer. I served as an attorney law clerk on the Ninth Circuit Court of Appeals and the United States District Court. I had the pleasure of working with two invaluable mentors, the Honorable Lloyd D. George and the Honorable Johnnie B. Rawlinson. While with Judge George, one of my primary responsibilities was to review all of the bankruptcy appeals. I reviewed the entire record before the bankruptcy court and the parties' appellate briefs. Under Judge George's experienced direction, I then drafted proposed opinions deciding the bankruptcy appeals. I also had the opportunity to review numerous motions to dismiss and for summary judgment on a broad range of issues which included contracts, employment discrimination, civil rights, takings, intellectual property, personal injury, governmental immunities, and unfair trade practices. After my review, I would draft proposed orders deciding those motions. I also drafted numerous proposed orders resolving evidentiary issues in both criminal and civil cases. Under Judge George's direction, I also reviewed and finalized proposed jury instructions in both civil and criminal cases. Additionally, I reviewed sentencing reports from pretrial services and opined on whether the proposed sentences complied with federal sentencing guidelines.

Upon completion of my clerkship with Judge George, Judge Rawlinson, offered me a two-year clerkship. She was seeking an experienced law clerk, as she was a newly appointed judge. I therefore became intimately acquainted with the challenges faced by a newly appointed judge. Under Judge Rawlinson's direction, I continued my duties that I performed under Judge George. Judge Rawlinson, however, tasked me with reviewing her most difficult cases.

When Judge Rawlinson was appointed to the Ninth Circuit, she asked that I continue as her law clerk for the next two years. During my clerkship on the Ninth Circuit, I was assigned the most difficult cases by Judge Rawlinson. For example, I was responsible for reviewing all death penalty cases and all cases heard en banc. As Judge Rawlinson's confidence in my abilities grew, I was permitted to have greater input into the ultimate opinion drafted and which opinions would be published. I was one of the few Ninth Circuit law clerks permitted to attend panel

deliberations after the appeal was heard. I also had the opportunity to serve as a mentor to Judge Rawlinson's other law clerks. I was charged with assigning the upcoming cases to the other law clerks. In many instances, Judge Rawlinson requested that I review proposed opinions drafted by other law clerks before she would provide the final review. While I have not actually performed the duties of a District Court Judge, Judge George and Judge Rawlinson, under their kind tutelage, have provided me with first hand experience as to what is required of a judge. Accordingly, my five years of experience with the federal courts have provided me with broad insights to most, if not all, of the civil and criminal issues that will face a Justice on the Nevada Supreme Court.

I also served as an arbitrator and judge pro tempore in the Eighth Judicial District's short trial program. As an arbitrator, I have entertained discovery disputes, presided over arbitrations, and rendered judgments. As a short trial judge, I have prepared for trial on two (2) occasions. In both instances, however, the cases settled before reaching trial.

I also have quasi-judicial experience as a member of the Nevada State Bar, Functional Equivalency Committee for the past eight years. The Functional Equivalency Committee holds hearings to determine whether applicants for the Nevada State Bar, who have not graduated from an ABA accredited law school, have the functional equivalent education provided by an ABA accredited law school through their education as subsequently augmented by their experience. As a committee member, I am responsible for reviewing petitions, attending hearings, and drafting reports and recommendations to the Nevada Supreme Court.

22. Describe any pro bono or public interest work as an attorney.

I assisted a family from Alabama, pro bono, to obtain guardianship of their adult son who had been admitted to University Medical Center and is unable to respond.

My service on the Functional Equivalency Committee for the past eight years, referenced in question 21, is also part of my pro bono or public interest service.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

I have been a member of the Functional Equivalency Committee for the past eight years. The Functional Equivalency Committee holds hearings to determine whether applicants for the Nevada State Bar, who have not graduated from an ABA accredited law school, have the functional equivalent education provided by an ABA accredited law school through their education as subsequently augmented by their experience. As a committee member, I am responsible for reviewing petitions, attending hearings, and drafting reports and recommendations to the Nevada Supreme Court.

In the past, I have been a member of the American Bar Association and the Clark County Bar Association. I also have been a member of the Public Lawyers Section of the Nevada State Bar.

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

Yes, I am in compliance with my continuing legal education requirement. *See Attachment "C."*

25. Do you have Professional Liability Insurance or do you work for a governmental agency?

I currently have Professional Liability Insurance.

| | |--------------------------------------| | Business and Occupational Experience | |--------------------------------------|

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Yes, I owned and operated my own computer consulting business from 1985 to 1989.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:
- a. the nature of the business,
 - b. the nature of your duties,
 - c. the extent of your involvement in the administration or management of the business,
 - d. the terms of your service,
 - e. the percentage of your ownership.

From July 2013 to February 2015, I was engaged in the practice of law as solo practitioner, for which I was 100 percent responsible. A large percentage of my practice involved contract work for other firms.

From 1985 to 1989, I owned and operated my own computer consulting business. My duties primarily involved maintaining DOS based computers for small businesses. The business was a sole proprietorship, where I was sole owner.

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

I have no experience as an executor or trustee. My practice as an attorney is my only experience in a fiduciary capacity which is fully set forth in my work history.

Civic, Professional and Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state? Have you been a candidate for such an office? If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

I have not had the honor of holding elective or appointive public office in the State of Nevada or any other state. I have, however, been a candidate for judge in two (2) elections.

In 2008, I ran for Nevada District Court Judge for Department 14 against Judge Donald Mosley. Despite the uphill battle of running against an entrenched incumbent, I ran against Judge Mosley in an effort to restore integrity to the Nevada District Court. Judge Mosley had been sanctioned for seven (7) separate ethical violations by the Nevada Supreme Court. I survived the primary election, but narrowly lost to Judge Mosley in the general election.

In 2011, I ran for Las Vegas Municipal Court Judge against Judge George Assad. Judge Assad had also been sanctioned by the Nevada Supreme Court. He ordered a woman to be put in jail without cause until her boyfriend appeared in court on an outstanding warrant. In addition to the uphill battle of again facing an incumbent, I was not able to expend any funds on my campaign because I had depleted my savings in my previous campaign. Despite the lack of funding, I came in third of six candidates in the primary. After the primary, I vigorously supported Judge Assad's remaining challenger. The challenger credited my efforts in eventually unseating Judge Assad in the general election.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

My significant activities are fully stated in answer to question 32.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

I have not taught any law schools or continuing education programs.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

I am a member of the Church of Jesus Christ of Latter-day Saints. Between September 1979 and October 1981, I served a two-year mission for the Church of Jesus Christ of Latter-day Saints, in the Chile - Viña del Mar Mission. Serving the people of Chile began my lifelong commitment to public service. From July 2015 to the present, I have served as second counselor in the Durango Ward Bishopric. The Bishopric in the LDS church is responsible for managing a specific congregation. From January 2012 to July 2015, I served as a Gospel Doctrine Instructor. Between 2006 and 2011, I served as an Elders Quorum Instructor. Between 2008 and 2010, I served as Executive Secretary to the Durango Ward Bishop. Between 2004 and 2006, I served as First Counselor in the Durango Ward Elders Quorum Presidency. Between 2002 and 2004, I served as a Durango Ward Missionary.

I am also a member of the Boy Scouts of America and have achieved the rank of Eagle Scout. From July 2015 to the present, I have served as the Charter Organizational Representative. From

2012 to the July 2015, I have served on the Boy Scout Committee for Troop 462 of the Las Vegas Area Council, which committee I chaired. Between 2010 and 2011, I served as a leader of Cub Scout Pack 462 of the Las Vegas Area Council. Between 2001 and 2002, I served as an Assistant Scout Master for Troop 462. During the times when I have not served in a specific position, I continue to be actively involved in scouting by serving as a merit badge counselor and generally assisting Boy Scouts to achieve the rank of Eagle.

33. List honors, prizes, awards, or other forms of recognition.

In law school, I was twice named as a William H. Leary Scholar, which is given to students who are in the top 10% of their class for a semester.

While only 14 years of age, I earned the rank of Eagle Scout in the Boy Scouts of America and throughout my life I have been actively involved in scouting.

34. Have you at anytime in the last 12 months belonged to or do you currently belong to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No.

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

Between August 1997 and September 2002, I assisted Judge Lloyd D. George and Judge Johnnie B. Rawlinson with the preparation of numerous judicial opinions, none of which I am permitted to divulge.

36. During the past ten years, have you been registered to vote? Have you voted in the general elections held in those years?

I have been registered to vote in the last ten years and I have voted in the general elections in those years.

37. List avocational interests and hobbies.

My main interest is my family. My wife, son and I enjoy spending time together exploring the diverse beauties of the desert southwest and the State of Nevada. My wife and I (and sometimes our 15 year old son) enjoy the theatre, whether at the Smith Center, Spring Mountain Ranch State Park, Las Vegas Academy for the Arts, or at the Utah Shakespearean Festival. I also enjoy going on Boy Scout camp outs and playing basketball with my son.

I am currently in the process of renovating a cabin in Old Town at Mount Charleston, Nevada, which we bought as a family getaway. Renovating the cabin allows me to use skill I developed as a boy when our family built our own home. I completely gutted the kitchen and bathroom back to the bare studs and even removed the floor joists. I replaced all of the plumbing and most of the electrical. I replaced sheet rock with wood siding. I built new kitchen cabinets

and installed granite counter tops. I also installed new tile and wood floors. The cabin remains a work in progress and provides an opportunity for our family to both work and play together.

Conduct

38. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges and dispositions.

Other than the occasional traffic ticket, I have not been found in violation of any law, ordinance or regulation. The only traffic ticket currently on record with the Nevada Department of Motor Vehicles is a citation for speeding on October 29, 2012, in Salt Lake City, Utah, to which I pled guilty and paid a fine.

39. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any court, judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to question 71.

No.

40. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

In 1984, while attending Brigham Young University, I was placed on academic suspension which was the result of a broken marriage engagement that interfered with my ability to concentrate on school work. I was ultimately readmitted and graduated from Brigham Young University in August 1992.

41. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No.

42. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No.

43. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No.

44. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

On May 1, 2012, I submitted an application for a position as a United States Magistrate Judge with the United States District Court for the District of Nevada. Another applicant was chosen for the position.

On November 12, 2014, I submitted an application for a position as a Nevada Appellate Court Judge for the State of Nevada. Another applicant was chosen for the position.

On December 15, 2014, I submitted an application for the position of Justice of the Peace for the Las Vegas Justice Court. Another applicant was chosen for the position.

On January 28, 2015, I submitted an application for two (2) positions as a Nevada District Court Judge. Other applicants were chosen for the positions.

45. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what particular education, experience, personality or character traits you possess or have acquired that you feel qualify you as a good district court judge. In so doing, address both the civil (including family law matters) and criminal processes (including criminal sentencing.)

See Attachment "D."

46. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

I would like to thank the members of the Commission on Judicial Selection for volunteering their time to review my application for Justice on the Nevada Supreme Court. It would be a great honor to be deemed worthy to be a Justice for the great State of Nevada. As a sixth generation Nevadan, I deeply care about this State. My hope is that as a Justice, I will improve the quality and timeliness of judicial decisions, which will insure access to justice for all Nevadans. If selected as a District Court Judge, I pledge to maintain the highest ethical standards, to be courteous to all that appear before me, and to expend the time necessary to be fully prepared to address the issues faced by the court. I commit to use my unique experience, talents, and abilities to accomplish these goals while I serve the citizens of Nevada.

47. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

See Attachment "E."

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Attachment A Employment History

Please start with your current employment or most recent employment, self employment, and Periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer: Cohen\Johnson\Parker\Edwards.

Phone Number: (702) 823-3500

Address: 3933 Lost Miner Court, Las Vegas, Nevada 89129

From: March 2015, **To:** Present

Supervisor's Name: H. Stan Johnson

Supervisor's Job Title: Partner

Your Title: Attorney

Specific Duties: Civil Litigation and Appellate practice before Nevada and United States Courts. My principal duty is to analyze cases to determine issues which would resolve the case in motion practice. My duties also include trial preparation, preparing legal strategy, legal research, drafting briefs, supervising others in drafting briefs, analyzing opposing briefs, and appearing at oral arguments.

Reason for Leaving: Not applicable, current employment.

Previous Employer:: Solo practitioner as Chris Davis, Esq.

Phone Number: (702) 860-7521

Address: 3933 Lost Miner Court, Las Vegas, Nevada 89129

From: July 2012, **To:** March 2015

Supervisor's Name: None, self-employed

Supervisor's Job Title: None, self-employed

Your Title: Attorney

Specific Duties: Civil Litigation and Appellate practice before Nevada and United States Courts. Duties include client counseling, analyzing trial pleadings, preparing legal strategy, legal research, drafting briefs, supervising others in drafting briefs, analyzing opposing briefs, and appearing at oral arguments.

Reason for Leaving: To take current employment.

Previous Employer: City of North Las Vegas

Phone Number: (702) 633-1050

Address: 2250 Las Vegas Boulevard North, North Las Vegas, Nevada 89030

From: March 2006, **To:** July 2012

Supervisor's Name: Steve Demaree (702) 431-1941

Supervisor's Job Title: Assistant City Attorney

Your Title: Deputy City Attorney

Specific Duties: Senior litigator in the civil division for the North Las Vegas City Attorney, focusing on Civil Rights, Employment, and Personal Injury actions. Served as a mentor for other attorneys in the civil division. Routinely practiced before the Ninth Circuit Court of Appeals, Nevada Supreme Court, United States District Court, Nevada District Court and the Local Government Employee-Management Relations Board.

Reason for Leaving: I resigned over disputes with the newly appointed City Attorney.

Previous Employer: Morris Pickering

Phone Number: (702) 474-9400

Address: 300 South 4th Street, Suite 900, Las Vegas, Nevada 89101

From: September 2002, **To:** March 2006

Supervisor's Name: Steve Morris

Supervisor's Job Title: Managing Partner

Your Title: Attorney

Specific Duties: Appellate and civil litigation practice focusing on complex commercial litigation involving Contracts, Corporations, Administrative, Real Property, Tort, and Employment Law.

Reason for Leaving: I left to return to public service at the City of North Las Vegas.

Attachment A Employment History Continued
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Previous Employer: United States Ninth Circuit Court of Appeals

Phone Number: (702) 464-5670

Address: 333 Las Vegas Boulevard South, Las Vegas, Nevada 89101

From: September 2000, **To:** September 2002

Supervisor's Name: Honorable Johnnie B. Rawlinson

Supervisor's Job Title: United States Appellate Court Judge

Your Title: Senior Attorney Law Clerk

Specific Duties: Assisted newly appointed circuit court judge with creating and implementing chamber policies and procedures. Worked on a broad range of civil and criminal issues brought before Ninth Circuit Court of Appeals including all death penalty cases and cases heard en banc. Reviewed and analyzed court record and appellate briefs. Drafted proposed opinions for review by Judge Rawlinson. Supervised and mentored other attorney law clerks.

Reason for Leaving: Clerkship ended.

Previous Employer: United States District Court for the District of Nevada

Phone Number: (702) 464-5670

Address: 333 Las Vegas Boulevard South, Las Vegas, Nevada 89101

From: September 1998, **To:** September 2000

Supervisor's Name: Honorable Johnnie B. Rawlinson

Supervisor's Job Title: United States District Court Judge

Your Title: Senior Attorney Law Clerk

Specific Duties: Assisted newly appointed district court judge with creating and implementing chamber policies and procedures. Worked on a broad range of civil and criminal issues brought before the federal district court including all bankruptcy appeals. Reviewed and analyzed court record and briefs. Reviewed and analyzed criminal sentencing recommendations. Drafted proposed orders for review by Judge Rawlinson.

Reason for Leaving: Clerkship ended.

Attachment A Employment History Continued
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Previous Employer: United States District Court for the District of Nevada

Phone Number: (702) 464-5500

Address: 333 Las Vegas Boulevard South, Las Vegas, Nevada 89101

From: August 1997, **To:** September 1998

Supervisor's Name: Honorable Lloyd D. George

Supervisor's Job Title: United States District Court Judge

Your Title: Attorney Law Clerk

Specific Duties: Assisted judge with all phases of civil and criminal litigation for the Court, including bankruptcy appeals. Responsibilities included evaluating case files, researching applicable law, writing memoranda, making recommendations, and preparing court orders.

Reason for Leaving: Clerkship ended.

Previous Employer: McMurray, McMurray, Dale & Parkinson (firm has ceased operations)

Phone Number: (801) 444-4300 (phone number of Judge Robert J. Dale, former supervisor)

Address: Honorable Robert Dale, Second District Court, 425 Wasatch Drive, Layton, UT 84041

From: December 1993, **To:** August 1997

Supervisor's Name: Robert J. Dale

Supervisor's Job Title: Partner

Your Title: Attorney

Specific Duties: Appellate and civil litigation practice focusing on commercial litigation involving Contracts, Corporations, Administrative, Real Property, Tort, and Employment Law.

Reason for Leaving: I left to take employment as a federal law clerk.

Attachment C

Attachment C

Nevada Board of Continuing Legal Education

Unaudited CLE Transcript

Tuesday, January 27, 2015		Needed for Compliance: Credits: General: 10 Ethics: 2 Substance Abuse: 0 Fees: 2015 Annual Fee \$40.00
Chris W. Davis		
Compliance Group 1		
2015 Compliance Period Ending : Thursday, December 31, 2015		

This course transcript indicates the courses and distribution of CLE credits for the compliance periods displayed as well as carry over to the next year. The Excess Credits column includes credits exceeding the carry over limit.

Course Date	Course Name	Total Credits	Credits Applied by Year				Carry Forward	Excess Credits
			2014		2015			
12/31/2013	2013 SUBSTANCE ABUSE	1.00S						
12/31/2013	2013 CARRY HOURS	2.50E			2.00E	0.50E		
12/31/2014	Limited Scope Representation 2014: Ethical & Practical Challenges	1.00ED			1.00ED			
12/31/2014	Limited Scope Representation 2014: Ethical & Practical Challenges	1.00GD			1.00GD			
12/31/2014	Schuette v. Coalition to Defend Affirmative Action & the Roberts Court's Vision of a Post-Raci	1.00GD			1.00GD			
12/31/2014	Representing the Pro Bono Client: Consumer Law Basics 2014	5.00GD			5.00GD			
12/31/2014	Critical Start-Up Business & Legal Issues 2014	1.50GD			1.50GD			

If you do not see a course posted to your record, please be advised credits are entered in the order they are received.
 REMINDER: Excess ethics can be used towards any general credit deficiency.

Requirements Met or Waived:

	N	N
Total Hours Required:	0	12
Hours Required By:	12/31/2014	12/31/2015

Posting Codes

E = Ethics
G = General
S = Substance Abuse
A = Authorship
B = Bridge the Gap
D = Alternate Format
H = In-Home Study
F = Faxed
T = Teaching

Nevada Board of Continuing Legal Education

Unaudited CLE Transcript

Friday, September 9, 2016		Needed for Compliance: Credits: General: 9 Ethics: 2 Substance Abuse: 0
Chris W. Davis		
Compliance Group 1		
2016 Compliance Period Ending : Saturday, December 31, 2016		

This course transcript indicates the courses and distribution of CLE credits for the compliance periods displayed as well as carry over to the next year. The Excess Credits column includes credits exceeding the carry over limit.

Course Date	Course Name	Total Credits	Credits Applied by Year				Excess Credits *
			2015	2016	2017	2018	
12/31/2013	2013 SUBSTANCE ABUSE	1.00S					
12/31/2013	2013 CARRY HOURS	2.50E	0.50E				
12/31/2014	Limited Scope Representation 2014: Ethical & Practical Challenges	1.00ED					
12/31/2014	Limited Scope Representation 2014: Ethical & Practical Challenges	1.00GD					
12/31/2014	Schuetz v. Coalition to Defend Affirmative Action & the Roberts Court's Vision of a Post-Raci	1.00GD					
12/31/2014	Representing the Pro Bono Client: Consumer Law Basics 2014	5.00GD					
12/31/2014	Critical Start-Up Business & Legal Issues 2014	1.50GD					
4/29/2015	Arbitrator Training & Refresher Course	5.50G	5.50G				
4/29/2015	Arbitrator Training & Refresher Course	0.50E	0.50E				
5/13/2015	Short Trial Pro Tempore Judge Training & Refresher	2.50G	2.50G				
5/13/2015	Short Trial Pro Tempore Judge Training & Refresher	0.50E	0.50E				
12/31/2015	Representing the Pro Bono Client: Advocacy Skills for Administrative Hearings 2015	3.00GD	2.00GD	1.00GD			
12/31/2015	Ethical Issues in Working with Pro Bono Clients	1.00ED	1.00ED				

If you do not see a course posted to your record, please be advised credits are entered in the order they are received.
REMINDER: Excess ethics can be used towards any general credit deficiency.

Previous Carry Forward: 0.50 1.00
Total Credits Taken: 13.00 0.00
Total Credits Applied This Period: 12.50 1.00
Total Credits Carried: 1.00 0.00

Requirements Met or Waived: Y N

Total Hours Required: 0 11

Hours Required By: 12/31/2015 12/31/2016

* SCR 210 2(B) Any attorney subject to these rules who completes more than twelve (12) hours of accredited educational activity in any calendar year may carry forward up to twenty (20) hours of excess general credit and four (4) hours of excess ethics credits in any calendar year for the next two (2) calendar years.

Posting Codes

E = Ethics
G = General
S = Substance Abuse
A = Authorship
B = Bridge the Gap
D = Alternate Format
H = In-Home Study
P = Preparation Time
T = Teaching

Attachment D

Attachment D

STATEMENT OF QUALIFICATIONS

I would again like to thank the members of the Committee on Judicial Selection for volunteering their time to review my application for Justice of the Nevada Supreme Court. I am seeking to be appointed to the Nevada Supreme Court because my career has been devoted to public service. Eleven (11) of my twenty-one (21) years as an attorney have been devoted to public service: six (6) years as a Deputy City Attorney for the City of North Las Vegas, two (2) years as a Senior Attorney Law Clerk working on appeals before the United States Court of Appeals for the Ninth Circuit, and three (3) years working for the United States District Court for the District of Nevada. I also have extensive experience as a litigator in the private sector. My unique experience should prove to be an asset to the Nevada Supreme Court.

While it is difficult to sum up a career in the short pages allotted, my principal legal skill has been understanding the contours of the legal issues with which I am faced. Not only am I able to analyze issues with which I am directly faced, I have the ability to discern the underlying legal issues which must be considered when deciding a case such as jurisdictional issues, due process concerns, and procedural matters which are not readily apparent from the face of the pleadings. I have built my career on not only recognizing these issues, but in expending significant time and energy in familiarizing myself with the different approaches taken by courts across the country when addressing these issues. The aspect of the law I enjoy the most is puzzling through these different approaches to reach the best result. I am seeking an appointment to the Nevada Supreme Court because I genuinely believe that good law requires considered decisions based on precedent, which may not necessarily be found in the parties' briefs. Those who know my work best, are familiar with my ability to work tirelessly on a problem until I am fully acquainted with the rational alternatives and draft my findings in a persuasive fashion. This is the talent, I hope to bring to the Nevada Supreme Court.

For example, when faced with Nevada Supreme Court precedent finding Nevada's Notice of Claim Statute to be unconstitutional on equal protection grounds, I undertook a significant investigation into the underpinnings of the Nevada Supreme Court's decision. I discovered that the three principal cases upon which

the precedent was based, were decisions from other states which had subsequently been overturned. I further found an obscure United States Supreme Court case which had dismissed a direct appeal of an Idaho decision refusing to find a similar notice of claim statute unconstitutional. I used that dismissal to successfully argue that, unlike a denial of certiorari, a dismissal of a direct appeal was a decision on the merits and therefore binding precedent on whether notice of claims statutes violated the equal protection clause. This is just a small example of my ability to wrestle with difficult legal issues.

Currently, I am working for the firm of Cohen|Johnson|Parker|Edwards. My practice involves a wide-range of commercial litigations, involving issues of first impression under Nevada's Uniform Trade Secrets Act, Nevada's Wage Act, and other complex commercial matters. Even though I am now in private practice, I have made time for public service. For eight years, I have served on the Functional Equivalency Committee for the Nevada Bar. As a committee member, I am responsible for reviewing petitions, attending hearings, and drafting reports and recommendations to the Nevada Supreme Court. My public service also includes pro bono work. Recently, I represented Alabama parents seeking guardianship over their adult son who became incapacitated while visiting Las Vegas. This case has introduced me to many family law issues which are not normally part of my practice.

Previously, I served as the primary litigator and appellate counsel for the City of North Las Vegas (the "City"), as a Deputy City Attorney. I defended the City and its police department against most of the civil rights actions involving 42 U.S.C. § 1983, Title VII actions, actions under the Americans with Disabilities Acts ("ADA"), and actions under the Age Discrimination in Employment Act ("ADEA"). Many of the civil rights actions that I litigated involved issues that are equally applicable in criminal cases such as probable cause, unreasonable search and seizure, warrant execution, and excessive force. I also defended the City against almost all of the personal injury actions filed against the City.

Before I left the City, I was charged with litigating all employment cases under Nevada's Local Government Employee-Management Relations Act. I also advised the City on many important legal and policy

issues which included contract negotiations and issues involving Nevada's Open Meeting Law. I was responsible for reviewing all subpoenas served on the City, both civil and criminal, and successfully quashed many improper subpoenas. I also supervised outside counsel in handling eminent domain cases brought against the City. During my tenure with the City, I served as a mentor. As the litigator with the most experience in the civil division, the other attorneys in the office consistently sought my advice and help in preparing and executing litigation strategy.

Prior to coming to the City of North Las Vegas, I worked for the firm of Morris, Pickering and Peterson. My practice primarily involved complex commercial litigation. I was responsible for multi-million dollar cases for clients that included: Nevada Power Company, MGM Resorts International, Harrah's Entertainment Inc., and Granite Construction Company. While at Morris Pickering, I had the opportunity to work closely with Kris Pickering, now a justice with the Nevada Supreme Court.

I have also served as an attorney law clerk on the Ninth Circuit Court of Appeals and the United States District Court. I had the pleasure of working with two invaluable mentors, the Honorable Lloyd D. George and the Honorable Johnnie B. Rawlinson. My five years of experience with the courts have provided me with a broad insight to most, if not all, of the civil and criminal issues that will be faced by a Justice on the Nevada Supreme Court. As Judge Rawlinson's first law clerk, I became intimately acquainted with the challenges faced by a newly appointed judge. I was assigned the most difficult cases by Judge Rawlinson, and after extensive research and analysis, I would then prepare a proposed opinion for Judge Rawlinson's review. While I have not actually performed the duties of a judge, Judge George and Judge Rawlinson, under their kind tutelage, have provided me with first hand experience as to what is required of an outstanding jurist.

Throughout my career, I have practiced law with the utmost integrity, which I will bring to the Nevada Supreme Court. My experience has provided me with the ability to find creative solutions to complex problems. I have never been satisfied until I have explored all available options. If permitted, I will use all of my talents and preparation on behalf of the Nevada Supreme Court and the people of the great State of Nevada.

Attachment E

Attachment E

CHRIS DAVIS WRITING SAMPLE

I. INTRODUCTION

Plaintiffs Tiffany Sargent, Bailey Cryderman, Samantha Ignacio, Vincent Ignacio, Rosie Boggs and Jacquelyn Wiederholt's (collectively "Plaintiffs") Partial Motion for Summary Judgment ("Plaintiffs' Motion") is wholly without merit. Plaintiffs seek an "adjudication of liability [under Nevada law] for all employees" to whom GSR issued checks in early 2015, approximately 1162 individuals, *even though no class has been certified under Fed. R. Civ. P. 23*. Plaintiffs indisputably lack standing to advance claims on behalf of unnamed putative class members who they do not represent. In fact, as the Seventh Circuit has held, moving for summary judgment on claims prior to class certification precludes Plaintiffs from pursuing such claims as class claims.

Further, GSR, *not* Plaintiffs, is entitled to summary judgment on Plaintiffs' State law wage claims. Plaintiffs' wage claims under NRS 608.016 – 608.140 fail because they cannot be enforced by a private right of action. The Legislature never provided for such a private right of action, but instead expressly indicated that those statutes are to be enforced by Nevada's Labor Commissioner. Additionally, the overtime provisions of NRS 608.018 -- the underlying basis of Plaintiffs' Motion -- do not even apply to Plaintiffs covered by CBAs which provide otherwise for overtime. The majority of the individuals at issue are covered by CBAs. Claims by Plaintiffs covered by a CBA are preempted by the Labor Management Relations Act ("LMRA"), and are otherwise barred for failing to timely exhaust grievance procedures required under the CBA.

Plaintiffs' remaining arguments are equally without merit. Plaintiffs are *not* entitled to attorney fees under NRS 608.140 because they failed to make the required demand for a "sum" certain. NRS 608.140 does not even apply to Plaintiffs' statutory wage claims, but only applies to common law contract claims for wages, which Plaintiffs do not assert. Likewise, prejudgment interest under NRS 99.040 applies only to contract disputes. Plaintiffs cannot claim prejudgment interest because NRS Chapter 608, upon which Plaintiffs' claims are based, does not provide for prejudgment interest. Penalties under NRS 608.040 and 608.050 are limited to claims for unpaid contractually agreed upon "regular" wages, *not* Plaintiffs' statutory overtime claims.

1 Even if Plaintiffs' claims were not foreclosed as a matter of law, Plaintiffs offer no admissible
2 evidence in support of their erroneous wage claims. Plaintiff Boggs, the *sole* example offered to
3 establish an alleged violation of the statutes as issue, expressly testified that GSR paid her *all* overtime
4 that was due. In fact, GSR has paid the overtime required by NRS 608.018 to its current and former
5 employees. Accordingly, Plaintiffs' claims for statutory overtime have no merit and are otherwise moot.
6 The Court should therefore deny Plaintiffs' Motion and grant GSR's motion for summary judgment on
7 Plaintiffs' the Fourth, Sixth, Seventh and Eighth Causes of Action.

8 * * * * *

9 **III. ARGUMENT**

10 * * * * *

11 **B. Plaintiffs' Wage Claims Under NRS 608.016 – 608.140 Have NO Merit Because Those** 12 **Cannot Be Enforced By A Private Right Of Action But Can Only Be Enforced By the** 13 **Labor Commissioner.**

14 Plaintiffs' Motion erroneously seeks judgment on claims under NRS 608.018 and 608.020 -
15 608.050. In Plaintiffs' Complaint, they improperly allege claims under NRS 608.016, 608.018, 608.020,
16 608.040, 608.050, 608. 100, 608.140, 608.250 and 608.260 for failure to pay for all hours worked,
17 failure to pay minimum wage, failure to pay overtime, failure to pay wages upon termination, and for
18 unlawful chargebacks. *See* Complaint, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action, at 12
19 – 17. All of Plaintiffs' claims under Chapter 608 lack merit. Those sections provide *no* private right of
20 action, with the sole exception of NRS 608.260 for failing to pay minimum wages.

21 In *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 969, 194 P.3d 96, 107 (2008), the Nevada
22 Supreme Court expressly held that no private cause of action to enforce NRS 608.100 can be implied.
23 Accordingly, Plaintiffs' Eighth Cause of Action for unlawful charge backs pursuant to NRS 608.100 is
24 frivolous and GSR is entitled to judgment on that claims as a matter of law.¹ *Baldonado's* reasoning

25 ¹ Because all class action claims should be precluded due to Plaintiffs' improperly moving for summary judgment
26 prior to class certification, GSR only seeks summary judgment against Named Plaintiffs. GSR in no way waives
27 the protection afforded by requiring class certification before Plaintiffs seek a ruling on the merits of the case. In
28 the unlikely event this Court finds it proper to consider the merits of the case for all putative class members, GSR respectfully requests that all of its arguments found in this partial motion for summary judgment apply to all class members as well.

equally applies to Plaintiffs' Fourth, Sixth and Seventh Causes of Action seeking relief under NRS 608.016, 608.018, 608.020, 608.040 and 608.050.

In *Baldonado*, the Nevada Supreme Court held that that when a section under NRS Chapter 608 “does not expressly mention whether employees may privately enforce its terms,” employees “may pursue their claims under that statute only if a private cause of action is implied.” 124 Nev. at 958, 194 P.3d at 100. The Court ruled that “[w]hether a private cause of action can be implied is a question of legislative intent” which may be ascertained by the three following factors: “(1) whether the plaintiffs are of the class for whose special benefit the statute was enacted; (2) whether the legislative history indicates any intention to create or to deny a private remedy; and (3) whether implying such a remedy is consistent with the underlying purposes of the legislative scheme.” *Id.* at 958-59, 194 P.3d at 100-01 (citation internal quotations omitted). The Nevada Supreme Court reasoned that these “three factors are not necessarily entitled to equal weight; the determinative factor is always whether the Legislature intended to create a private judicial remedy.” *Id.* at 959, 194 P.3d at 101. The Nevada Supreme Court found that “[w]ithout this intent, . . . a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.” *Id.* (citation and internal quotation omitted). As with NRS 608.100, the Nevada legislature never intended to create a private statutory cause of action to enforce NRS 608.016, 608.018, 608.020, 608.040 or 608.050.

In examining the first factor, the Nevada Supreme Court explained that “the inquiry is not whether [employees] would benefit from the statute, but rather, whether the Legislature intended to confer a right on employees as a class.” *Baldonado*, 124 Nev. 960 n.12, 194 P.3d at 102 n.12. The Nevada Supreme Court, quoting *Alexander v. Sandoval*, 532 U.S. 275, 289 (2001), held that “[s]tatutes that focus on the person regulated rather than the individuals protected create ‘no implication of an intent to confer rights on a particular class of persons.’” *Baldonado*, 124 Nev. at 960 n.12, 194 P.3d at 102 n.12. NRS 608.016, 608.018, 608.020, 608.040 and 608.050, all focus on the employer, the person regulated, rather than the employee, the person receiving the benefit. NRS 608.016 and NRS 608.018 begin with “[a]n employer shall” thus focusing on the employer rather than the employee. NRS 608.020 and NRS 608.050 also focus on the employer being regulated rather than the employee by beginning with “[w]henever an employer” NRS 608.040 again focuses on the employer by beginning with

1 “[i]f an employer fails to pay” Even though the employees may be the intended beneficiaries of
2 these statutes, by focusing on the employer rather than the employee NRS 608.016, NRS 608.018,
3 608.020, NRS 608.040 and NRS 608.050 demonstrate **no** intent by the Legislature to imply a private
4 cause of action. *See Garcia v. Interstate Plumbing & Air Conditioning, LLC*, Case No. 2:10-CV-410-
5 RCJ-RJJ, 2011 WL 468439, at *7 (D. Nev. Feb. 4, 2011) (holding NRS 608.018 “does not confer a right
6 on employees as a class, but instead regulates and focuses on the employer’s conduct”); *Bouder v.*
7 *Prudential Fin., Inc.*, Case No. CIV A 06-CV-4359 DMC, 2009 WL 4576056, at *4 (D.N.J. Dec. 2,
8 2009) (holding NRS “608.018 focuses on the duty imposed upon the employer”).

9 The Ninth Circuit, in *In re Digimarc Corp. Derivative Litig.*, 549 F.3d 1223, 1229-32 (9th Cir.
10 2008), reached an analogous result with respect to section 304 of the Sarbanes-Oxley Act of 2002. Like
11 NRS 608.016, 608.018, 608.020, 608.040 or 608.050, which mandate that the employer make certain
12 payments to employees under certain conditions, section 304 of the Sarbanes-Oxley Act mandated that
13 corporate officers make payments, in the form of reimbursements of compensation paid by the
14 corporation to the officers, when corporate officers failed to comply with securities law reporting
15 requirements.² *See Digimarc*, 549 F.3d at 1229. The Court held that “section 304 focuses on ‘the
16 person regulated’ [the corporate officers] rather than the ‘individual[] who will ultimately benefit from
17 [the statute’s] protection,’ [the corporation] and thus does not provide a private right of action” on behalf
18 of the issuer corporation. *Id.* at 1232. The court reached this conclusion even though the Act mandated
19 payments to the issuer corporation because the Act “speaks in terms of the remedy, detailing when and
20 under what circumstances a CEO and CFO must reimburse an issuer [corporation].” *Id.*, relying upon
21

22 ² Section 304 of the Sarbanes–Oxley Act of 2002 (15 U.S.C. § 7243(a)) provides in relevant part:

23 (a) Additional compensation prior to noncompliance with Commission financial reporting requirements

24 If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a
25 result of misconduct, with any financial reporting requirement under the securities laws, the chief executive
26 officer and chief financial officer of the issuer shall reimburse the issuer for—

26 (1) any bonus or other incentive-based or equity based compensation received by that person from the issuer
27 during that 12–month period following the first public issuance or filing with the Commission (whichever first
28 occurs) of the financial document embodying such financial reporting requirement; and

(2) any profits realized from the sale of securities of the issuer during the 12–month period.

1 the language in 15 U.S.C. § 7243(a) (“the chief executive officer and chief financial officer of the issuer
2 shall reimburse the issuer”).

3 NRS 608.016, 608.018, 608.020, 608.040 and 608.050, likewise speak in terms of the remedy,
4 when and under what circumstances employers must make payments to employee. These provisions
5 therefore focus on the employer, “the person being regulated,” rather than the employee who will
6 ultimately benefit from the payments. Accordingly, these provision do not provide a private right of
7 action on behalf of employees.

8 The legislative history examined under second factor also indicates an intent to deny a private
9 remedy. In *Alexander*, the United States Supreme Court held that the “express provision of one method
10 of enforcing a substantive rule suggests that [the Legislature] intended to preclude others.” 532 U.S. at
11 290. NRS 608.020, 608.040 and 608.050 were all passed as part of Chapter 71 of the Statutes of Nevada
12 (1919). Section 7, specifically provided that: “It shall be the duty of the labor commissioner to cause
13 this act to be duly enforced and upon notice from him the district attorney of any county in which a
14 violation of this act has occurred, shall prosecute the same according to law.” Statutes of Nevada,
15 Ch.71, Sec. 7 (1919). Conspicuously absent was any mention of enforcement of these provisions by
16 private action.

17 NRS 608.018 requiring the payment of overtime was passed as Section 7, Chapter 741 of the
18 Statutes of Nevada (1975). Section 14 of Chapter 741 amended NRS 608.180 to provide that Section 7
19 (NRS 608.018) was to be enforced by the Labor Commissioner, but also was amended to include the
20 “representatives” of the Labor Commissioner.³ Again, conspicuously absent was any mention of
21 enforcement of Chapter 7 (NRS 608.018) by private action. Section 16 of Chapter 741, even amended
22 NRS 608.260, which already provided the employee a private civil action to recover minimum wage, but
23

24 _____
25 ³ Statutes of Nevada, Chapter 741, Section 14 (1975) provides:

26 NRS 608.180 is hereby amended to read as follows:

27 608.180 The labor commissioner *or his representative* shall cause the provisions of NRS 608.010 to 608.170,
28 inclusive, *and sections 2 to 12, inclusive of this act* to be enforced, and upon notice from him the district attorney
of any county in which a violation of [NRS 608.101 to 608.170, inclusive,] *such sections* has occurred *or the*
special counsel, as provided by NRS 607.065, shall prosecute the [same] *action for enforcement* according to law.

1 did not include as part of that amendment a similar private civil action for the employee to recover
2 overtime wages or any other remedy under NRS Chapter 608.

3 NRS 608.016, imposing a duty on the employer to pay wages, was passed as Section 9, Chapter
4 152 of the Statutes of Nevada (1985). While Chapter 152 of the Statutes of Nevada made various
5 amendments to NRS Chapter 608, Chapter 152 did not alter Labor Commissioner's responsibility to
6 enforce "NRS 608.010 to 608.170, inclusive," including NRS 608.016. Once again, conspicuously
7 absent was any indication that any provision of NRS 608.010 to 608.170 was to be enforced by any
8 private action.

9 The Ninth Circuit's decision in *Northstar Fin. Advisors, Inc. v. Schwab Investments*, 615 F.3d
10 1106, 1115-17 (9th Cir. 2010) reveals that no private cause of action may be implied from NRS
11 608.016, 608.018, 608.020, 608.040 or 608.050. In *Northstar*, the Ninth Circuit held that "Congress did
12 not intend to create a private right of action to enforce section 13(a)" of the Investment Company Act
13 ('IAC'), prohibiting investment companies from changing certain investment policies, because
14 "Congress expressly authorized the SEC to enforce all provisions of the Act" and enacted "two express
15 private rights of action elsewhere in the ICA." 615 F.3d at 1115-17. The court, quoting *Sandoval*, 532
16 U.S. at 290, reasoned the "express provision of one method of enforcing a substantive rule suggests that
17 Congress intended to preclude others." *Northstar*, 615 F.3d at 1117. The court found that because the
18 ICA provides for SEC enforcement "it is highly improbable that Congress absentmindedly forgot to
19 mention an intended private action." *Id.* quoting *Transamerica Mortgage Advisors, Inc. v. Lewis*,
20 444 U.S. 11, 20 (1979). The court further found that "it is evident from the text of the ICA that
21 Congress knew how to create a private right of action to enforce a particular section of the Act when it
22 wished to do so," but "without the enactment of a corresponding express private right of action to
23 enforce § 13(a), indicates that Congress did not, by its silence, intend a private right of action to enforce
24 § 13(a)." *Northstar*, 615 F.3d at 1117; *see also Olmsted v. Pruco Life Ins. Co. of New Jersey*, 283 F.3d
25 429, 433 (2d Cir. 2002) ("Congress's explicit provision of a private right of action to enforce one section
26 of a statute suggests that omission of an explicit private right to enforce other sections was intentional").

27 The structure of NRS Chapter 608 likewise indicates that the Legislature did **not** intend to create
28 a private right of action to enforce NRS 608.016, 608.018, 608.020, 608.040 or 608.050. Since their

1 passage, the Labor Commissioner, *not employees*, has been directed to enforce each of these provisions.
2 *See* NRS 608.180. While enforcement has been expanded to include the Labor Commissioner’s
3 representative, and they in turn may authorize enforcement by county attorneys, the Deputy Labor
4 Commissioner, the Attorney General, or special counsel (*see* NRS 608.180), *no* authorization has been
5 added for general private enforcement of NRS Chapter 608. To the contrary, by enacting a private right
6 of action to enforce the minimum wage provisions found in NRS 608.260, the Legislature demonstrated
7 that it knows how to create a private right of action to enforce a particular section, but chose not to do so
8 for NRS 608.016, 608.018, 608.020, 608.040 and 608.050.

9 Finally, implying a remedy for NRS 608.016, 608.018, 608.020, 608.040 or 608.050 would be
10 inconsistent with the underlying purposes of the legislative scheme. In *Baldonado*, the Nevada Supreme
11 Court held that implying a remedy for provisions of NRS Chapter 608 which the Legislature ordered the
12 Labor Commissioner to enforce would be inconsistent with the underlying purposes of Chapter 608.
13 124 Nev. at 960, 194 P.3d at 102. The Court reasoned that “implying private remedies when the state
14 legislature has already contemplated administrative enforcement could create undesirable
15 inconsistencies.” *Id.* at 960-61, 194 P.3d at 102. The Court found that the “Labor Commissioner is
16 charged with knowing and enforcing the labor laws; these responsibilities acknowledge a special
17 expertise as to those laws.” *Id.* at 963, 194 P.3d 104. The Court reasoned that because the Labor
18 Commissioner must first resolve labor disputes, his “expertise is optimized” by developing facts and
19 legal conclusions in a written decision prior to judicial review. *Id.* at 963-64, 194 P.3d at 104.

20 As already set forth, NRS 608.016, 608.018, 608.020, 608.040 and 608.050 are all enforceable
21 by the Labor Commissioner. These statute require the same special expertise to ensure consistent
22 enforcement. Allowing private actions would create “undesirable inconsistencies” with the Labor
23 Commissioner’s administrative enforcement of Chapter 608. *See Baldonado*, 124 Nev. at 960-61, 194
24 P.3d at 102 (warning against “implying private remedies when the state legislature has already
25 contemplated administrative enforcement” when the private remedy creates “undesirable
26 inconsistencies”). For example, the Labor Commissioner has imposed a short two-year limitation period
27 for bringing claims under Chapter 608, while Plaintiffs insist that the limitation period should be at least
28 three (3) years. *Compare* NAC 608.105 (“the Commissioner will not accept any claim or complaint

1 based on an act or omission that occurred more than 24 months before the date on which the claim or
2 complaint is filed”) *with* Plaintiffs’ Motion at 17 n.16 (claiming “the three-year statute contained in NRS
3 11.190(3) for statutory violations must apply” to NRS 608.018).⁴ Additionally, the Labor
4 Commissioner has determined that claims under NRS Chapter 608 should **not** be enforced by means of a
5 class action, as opposed to the one now pursued by Plaintiffs. *See Wynn Las Vegas, L.L.C. v.*
6 *Baldonado*, 129 Nev. Adv. Op. 78, 311 P.3d 1179, 1182 (2013) (approving the “Labor Commissioner’s
7 conclusion that NAC 607.200 does not permit class actions” when pursuing claims under NRS Chapter
8 608). Furthermore, pursuant to NRS 607.170, the Labor Commissioner is entitled to “effect reasonable
9 compromises” with respect to claims under NRS Chapter 608, and has even reduced penalties under
10 Chapter 608 in certain circumstances. *See Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm’n*,
11 117 Nev. 835, 839, 34 P.3d 546, 549 (2001) (indicating that the Labor Commissioner found the
12 employee was entitled to a waiting time penalty, “pursuant to NRS 608.040” in the amount of
13 \$2,548.00, but waived \$2,000.00 of the penalty provided [the employer] paid within a specified time
14 period”). To allow a private right of action would thwart the administrative scheme devised by the
15 Labor Commissioner, created based upon his specialized expertise, to enforce provisions of NRS
16 Chapter 608. Under all three *Baldonado* factors, the Legislature did **not** intend to create a private cause
17 of action for NRS 608.016, 608.018, 608.020, 608.040 or 608.050. Accordingly, GSR is entitled to
18 judgment on Plaintiffs’ Fourth, Sixth, Seventh and Eighth Causes of Action in their complaint alleging
19 claims under NRS 608.016, 608.018, 608.020, 608.040, 608.050, and 608.100. As Plaintiffs’ Motion is
20 entirely based on those provisions, the motion has no merit whatsoever and should be denied.

21 Plaintiffs’ Complaint appears to imply that claims under NRS 608.016, 608.018, 608.018,
22 608.020, 608.040, 608.050 and 608.100 may be recovered pursuant to NRS 608.140. NRS 608.140
23 states:

24 Whenever a mechanic, artisan, miner, laborer, servant or employee shall have cause to
25 bring suit for wages earned and due according to the terms of his or her employment, and
26 shall establish by decision of the court or verdict of the jury that the amount for which he
27 or she has brought suit is justly due, and that a demand has been made, in writing, at least
28 5 days before suit was brought, for a sum not to exceed the amount so found due, the court

⁴ Interestingly, the private right of action to recover minimum wages has the same short two (2) year limitation period as NAC 608.105, and thereby avoids any inconsistency. *See* NRS 608.260.

1 before which the case shall be tried shall allow to the plaintiff a reasonable attorney fee, in
2 addition to the amount found due for wages and penalties, to be taxed as costs of suit.

3 Nothing in the text of NRS 608.140 indicates that this section creates a private statutory action,
4 much less imply a cause of action based on other provisions of Chapter 608. In *Cardoza v. Bloomin'*
5 *Brands, Inc.*, Case No. 2:13-CV-01820-JAD, 2014 WL 3748641, at *2 (D. Nev. July 30, 2014), this
6 Court held that “NRS 608.140's plain language merely creates a fee-shifting mechanism to recover
7 attorney fees in an employee's ‘suit for wages earned and due according to the terms of his or her
8 employment’” and “contains no language that creates a private right to enforce any legislatively created
9 employment right; nor does it acknowledge an employee's right to bring a suit to enforce any
10 employment statute.” This Court reasoned that because the “right to seek unpaid wages earned and due
11 according to the terms of employment predated and exists completely independent of NRS 608.140,”
12 “NRS 608.140 does not create a cause of action to recoup wages, and it is not a vehicle for the private
13 enforcement of NRS 608.016, 608.018, or any other provision of Nevada's Labor Code in a lawsuit.”
14 *Cardoza*, 2014 WL 3748641, at *3. The Court concluded that “NRS 608.140 did not create a private
15 right of action for unpaid wages, it just authorizes the recovery of attorney fees in a suit for the recovery
16 of wages due under the terms of employment.” *Id.*; see also *Descutner v. Newmont USA Ltd.*, Case No.
17 3:12-CV-00371-RCJ, 2012 WL 5387703, at *2 (D. Nev. Nov. 1, 2012) (holding NRS 608.140 “does not
18 imply a private remedy to enforce the labor statutes,” but only “govern fees and costs only in common
19 law contractual suits” for wages). As NRS 608.140 does **not** create a private cause of action for wages,
20 but only “recognizes”⁵ the preexisting common law contractual right to sue for wages, Plaintiffs cannot
21 rely on 608.140 to imply any private right of action under Chapter 608.

22 Additionally, the legislative history does not support the notion hat NRS 608.140 implies a
23 private right of action under the provisions of Chapter 608. This Court recognized that when “NRS
24 608.140 was first enacted in 1925, it was described simply as ‘[a]n Act authorizing the allowance of a
25 reasonable attorney fee to plaintiff in an action for the recovery of salary or wages, under certain

26
27 ⁵ This Court in *Cardoza* found that even though the Nevada Supreme Court stated in dicta in *Baldonado* that NRS
28 608.140 “‘recognize[s] a civil enforcement action to recoup unpaid wages,’” the *Baldonado* court framed the
“issue this way because the right to sue for unpaid wages existed in Nevada before NRS 608.140 was enacted.”
Cardoza, 2014 WL 3748641, at *3 (quoting *Baldonado*, 24 Nev. at 964 n.33, 194 P.3d at 104 n.33).

1 conditions.”” *See Cardoza*, 2014 WL 3748641, at *2. quoting Nev. Sen. J., 1925 Session, 170 (1925).
2 The statute was silent as to the creation of any private right of action for enforcement of Nevada’s wage
3 laws. For that reason, when Chapter 608 was amended in 1965 to establish a minimum wage, the
4 Legislature also amended Chapter 608 to allow employees to “bring a civil action to recover” unpaid
5 minimum wages. *See* NRS 608.260. If NRS 608.140 had already created a private right of action for
6 wages, rather than just “recognize” the common law contractual suit for wages, NRS 608.260 would be
7 unnecessary surplus. *See In Arguello v. Sunset Station, Inc.*, 127 Nev. Adv. Op. 29, 252 P.3d 206, 209
8 (2011) (holding that courts must consider statutory “provisions as a whole so as to read them in a way
9 that would not render words or phrases superfluous or make a provision nugatory”). As already set
10 forth, because the Legislature provided for an explicit provision to enforce one section of Chapter 608,
11 the Legislature did **not** intend a private right of action to enforce other sections of Chapter 608. *See*
12 *Northstar*, 615 F.3d at 1117; *Olmsted*, 283 F.3d at 433.

13 Plaintiffs simply have no right to enforce the provisions of Chapter 608, other than the express
14 provision to recover minimum wages under NRS 608.260. Accordingly, GSR is entitled to summary
15 judgment on Plaintiffs’ Fourth, Sixth, Seventh and Eighth causes of action in their complaint alleging
16 claims under NRS 608.016, 608.018, 608.020, 608.040, 608.050, 608.100, and NRS 608.140; and
17 Plaintiffs’ Motion, which is entirely based on those sections, has **no** merit and should be denied.

18 * * * * *